IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10912 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANLAL RAGHAVJI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10912 of 2003

MR NV ANJARIA for Petitioner No. 1

MR SN SHELAT, A.G. with MS MAITHILI MEHTA, A.G.P for Respondent No. 1,3

MR NIKHILESH J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 02/12/2004

ORAL JUDGEMENT

1. RULE. Service of rule is waived by learned A.G.P. Ms. Maithili Mehta for respondents nos. 1 and 3 and by learned advocate Shri N.J. Shah for respondent

no. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner is a resident of Anjar city and has been aggrieved by reconstitution of his plot made in pursuance of Town Planning Scheme No. 1. It has been prayed in the petition that the respondent authorities should be restrained from implementing the scheme so far as it pertains to the petitioner's land, which was formerly City Survey No. 2304 and which was given original plot No. 283. As a result of reconstitution of the said plot as per the provisions of Section 45 of the Gujarat Town Planning and Urban Development Act, 1976 (hereinafter referred to as "the Act"), the petitioner has been now allotted Final Plot No. 283. The grievance of the petitioner is that as a result of the reconstitution, the petitioner's building constructed on his original plot will have to be demolished as the petitioner has been allotted Final Plot at a different place.

3. It has been submitted by learned advocate Shri Anjaria that the construction, which was put up on original plot No. 283 was quite sound and was not found substantially damaged because of the earthquake, which had taken place on 26.01.2001. As a result of the town planning scheme, which has been made for the purpose of rehabilitation of the residents of Anjar, the petitioner would be adversely affected because his entire building would be demolished. It has been submitted by him that the scheme has been prepared in such a manner that several constructions put up by residents of Anjar city will have to be demolished while implementing the scheme. It has been submitted by him that had more care been taken by the respondent authorities, while making the scheme, possibly his building could have been saved.

4. He has added that in a scheme for rehabilitation, the respondent authorities ought not to have planned anything by destroying residential houses of many persons. It has been therefore submitted by him that the respondent authorities should be restrained from demolishing the construction put up by the petitioner on original plot No. 283.

5. It has been further submitted by the learned advocate appearing for the petitioner that when the petitioner was informed about the draft town planning scheme, he had filed his objection by remaining present before the Town Planning Officer on 29th August, 2002. He had also filed the objections but the said objections

were not considered by the Town Planning Officer as required to be considered under the provisions of Rule 26(5) of the Gujarat Town Planning and Urban Development Rules, 1976 (hereinafter referred to as "the Rules")

6. It has been submitted by the learned advocate that according to the provisions of the said Rules, the Town Planning Officer has to perform duties as a quasi judicial authority and the said Officer was supposed to record the reasons, but the Town Planning Officer did not record any reason and thereby he has violated the provisions of the Rules.

7. It has been further submitted by him that in fact the building belonging to the petitioner has been classified in G-3 category. The said fact denotes that the building was in a good shape and, therefore, due effort ought to have been made by the respondent authorities to the see that the said building is not demolished.

8. On the other hand, learned Advocate General Shri S.N. Shelat appearing with learned AGP Ms Maithili Mehta for respondents nos. 1 and 3 and learned advocate Shri N.J. Shah appearing for respondent no. 2 have submitted that so as to see that the earthquake affected city is planned in a systematic manner, and the residents of Anjar are rehabilitated as soon as possible, under the provisions of the Act different schemes have been made in respect of Anjar city. So far as the petitioner's land is concerned, it is covered under Town Planning Scheme No. 1 of Anjar. It has been submitted that it is practically impossible for the respondent authorities to reconstitute final plots in such a manner that the boundaries and area of the final plot remains the same as that of the original plot. It has been submitted that in the process of reconstitution of plots, very often the size of the final plot is reduced and boundaries of the original plot are changed or the final plot is allotted to the original plot-holder at a different place. It has been also submitted that the petitioner is having a wrong notion that the town planning schemes have been made only for the purpose of rehabilitation. Drawing my attention to a notification dated 9th May, 2001, it has been submitted on behalf of the respondents that the town planning scheme has been made not only for rehabilitation but it has been also made for better and systematic development of the city. It has been therefore submitted that in the process of planning, a portion of the building belonging to the petitioner will have to be demolished.

9. It has been submitted by the learned advocates appearing for the respondents that it was practically impossible to give different shape to the original plot belonging to the petitioner, because in that event, it would have been impossible to give any access to the said plot to the main road. The town planning scheme was made to see that each and every plot gets access to 6 meter wide road and as it was not possible to give any access to 6 meter wide road to original plot No. 283, the respondent authorities were constrained to allot Final Plot No. 283 to the petitioner at a different place. Final Plot No. 283 is hardly 30 meters away from the original plot. It has been submitted that the original plot belonging to the petitioner was having an irregular shape whereas the Final Plot allotted to the petitioner is having a regular shape, which would enable the petitioner to put up his construction in a better manner. It has been further submitted that the petitioner will be having access to a 6 meter wide road, whereas if any effort had been made to protect the construction put up by the petitioner on his original plot, possibly he could not have been given access to any road as it would have been surrounded by other Final Plots on which the respective owners would have put up their construction.

10. It has been submitted on behalf of the respondents that the submission made by the learned advocate for the petitioner that the respondent authorities had not considered the objections filed by the petitioner and had not recorded any reasons as required under the provisions of Rule 26(5) of the Rules, is not correct. The learned advocate appearing for respondent no. 2 has drawn my attention to Annexure - I annexed to the affidavit-in reply filed by Shri Balvantsinh Chavda, Chief Executive Officer of respondent no. 2. The said annexure is an extract of a Register maintained by respondent no. 2 wherein all the objections raised by the citizens have been recorded and the reasons given by the authority for not accepting the objections are given. Reason for not accepting suggestion of the petitioner has been recorded in the Register by the concerned Officer. Thus, it has been denied that there was violation of the provisions of Rule 26(5) of the Rules.

11. It has been further submitted that the submission of the petitioner that the building was in category G-3 is not correct. Learned advocate Shri Anjaria has filed an affidavit stating the fact that the petitioner's building, which was initially classified in G-5 category

was subsequently classified in G-3 category. It has been submitted for the respondent government authorities that the said change had been made by an unauthorised person. It has been further submitted that according to the original record, the building is in G-5 category and its category has not been changed at all.

12. I have heard the learned advocates. Looking to the fact that as a result of reconstitution of plots in a town planning scheme, normally a resident would not get his original plot and at times he has to lose some land. The petitioner cannot make a grievance, especially when he is deprived of only a small portion of his land as a result of implementation of the scheme. The judgements cited by the learned advocate for the petitioner would not help him because in the instant case, it was not possible to reconstitute Final Plot No. 283 at the place where Original Plot No. 283 was situated. Looking to the preliminary Town Planning scheme No. 1, which has been now sanctioned under the provisions of Section 65 of the act, it is very clear that reconstitution of Final Plot No. 283 at the same place would have been extremely difficult because in that event the petitioner or the plot holder could not have got any access to the main road.

13. So far as category of the building is concerned, in my opinion, it is hardly relevant whether the building was in category G-3 or G-5. If the petitioner's building is in G-5 category, the petitioner is entitled to have additional possession from the revenue authorities of the the state. Simply because the petitioner says that the building is in G-3 category, it would not give any further right to the petitioner under the Act because as a result of town planning, very often even a building which is absolutely sound might have to be demolished. In the instant case the respondent authorities firmly believe that the construction of the building is in G-5 category and, therefore, at the most the petitioner would have a right to get additional compensation on the basis that his building is in G-5 category. Thus categorisation of the building in the process of giving help to the earthquake affected people would not be relevant in the instant case and, therefore, all the averments pertaining to category of the construction put up on original plot no. 283 are irrelevant.

14. It is a known fact that due to the earthquake, practically the entire city of Anjar had been destroyed. So as to reconstruct the city, it was necessary to have

proper planning so that the buildings can be constructed in an organized manner. It is also an admitted fact that in the past constructions had been put up by the residents of Anjar in a very haphazard manner. Due to the said fact, roads of the city were very narrow and without any regular alignment. Now, practically all plot-holders of Anjar city will be having access to 6 meter wide road. This will result into better living for the residents of Anjar city and if in the process of planning, some land or construction is lost by some residents, no grievance should be made especially when the authorities responsible for planning the city have acted in good faith. Upon perusal of the record, there does not appear to be any arbitrariness on the part of the respondent authorities. This Court has limited jurisdiction because according to the settled legal position, this Court should not have a judicial review of such a decision unless there is patent arbitrariness or illegality on the part of the respondent authorities. Upon perusal of the record, it does not appear that the respondent authorities have acted in an arbitrary or illegal manner. It is also clear upon perusal of the record that requirement of the Rules was duly followed by the authorities by recording reasons, for which it was not possible to accept the suggestions made by the petitioner. Thus, it cannot be said that the authorities did not act as per the provisions of the Act and the Rules made thereunder.

15. Learned advocate Shri Anjaria has finally submitted that the petitioner would like to approach the concerned authority for making variation in the scheme. If any such application is made, the concerned authority shall take its decision as expeditiously as possible in accordance with law.

16. In view of the aforestated facts and circumstances, I do not find any substance in the petition, especially when no legal or fundamental right of the petitioner has been violated by any of the respondents The petition is therefore rejected. Rule is discharged.

(A.R. DAVE, J.)

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